

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

HELENI THAYRE, *Plaintiff*,

v.

TOWN OF BROOKLINE and JESSE  
GELLER, JOHANNA SCHNEIDER, MARK  
ZUROFF, KATE POVERMAN, LARK  
PALERMO, and RANDOLPH  
MEIKLEJOHN, as they are members of the  
BROOKLINE ZONING BOARD OF  
APPEALS, DANIEL BENNETT as Building  
Commissioner for the TOWN OF  
BROOKLINE, JOSEPH BRAGA as Deputy  
Building Commissioner, and ROBERT  
DOUGAN as Building Inspector, *Defendants*.

Civil Action No. 1:20-cv-10510

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO REMAND  
PENDENT STATE LAW CLAIMS AND TO CANCEL 3/24/21 SCHEDULING  
CONFERENCE**

Defendants respectfully submit this memorandum in support of their Motion to Remand Pendent State Law Claims and to Cancel 3/24/21 Scheduling Conference. Defendants seek remand of those counts that survive the Court's dismissal of Counts III-VIII (the federal and state constitutional claims), over which the Court had exercised supplemental jurisdiction after the Town removed the case from the Massachusetts Superior Court. These pendent State law claims are as follows: Count I (alleged violation of Mass. Gen. Laws. ch. 40A, § 17); Count II (alleged violation of Mass. Gen. Laws ch. 240, § 14A); and Count IX (alleged violation of Mass. Gen. Laws ch. 40A, § 5).

By way of background, on February 25, 2020, Plaintiff filed the instant complaint in the Massachusetts Superior Court for Norfolk County, inserting nine (9) counts against the Defendants consisting of a mixture of federal and state law constitutional claims (Counts III-

VIII) and state statutory zoning claims (Counts I, II and IX). [Dkt # 1 (Notice of Removal)]. On March 12, 2020, Defendants removed the case to federal court on the basis of federal question jurisdiction. [*Id.*] On February 19, 2021, the Court granted Defendants' motion to dismiss Counts III-VIII, consisting of the federal and state constitutional claims. [Dkt # 31] The only remaining counts are the state statutory zoning claims (Counts I, II and IX). On February 26, 2021, the Defendants filed an Answer to those three (3) state law zoning claims.

This case has not advanced beyond the motion to dismiss and Answer stage. Given the posture of the case, remand is appropriate under governing precedent. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139 (1966) (“[I]f the federal claims are dismissed before trial, ... the state claims should be dismissed as well.”); *Martinez v. Colon*, 54 F.3d 980, 990 (1st Cir. 1995) (affirming the dismissal without prejudice of pendent claims when the district court determined “far in advance of trial that no legitimate federal question existed”); *Rodriguez v. Doral Mortg. Corp.*, 57 F.3d 1168 (1995) (“As a general principle, the unfavorable disposition of a plaintiff’s federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state-law claims”).

Because remand is appropriate, it would be an inefficient use of judicial resources for the Court to hold a Scheduling Conference; therefore, Defendants respectfully ask the Court to cancel the Conference now on the Court’s calendar for March 24, 2021.

### **Conclusion**

For the foregoing reasons, Defendants’ respectfully ask this Court to grant their Motion to Remand Pendent State Law Claims and to Cancel 3/24/21 Scheduling Conference.

Respectfully submitted,  
Defendant,  
TOWN OF BROOKLINE, MASSACHUSETTS,

By its attorneys:

/s/ Patricia Correa

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Date: March 5, 2021

**CERTIFICATE OF SERVICE**

I, Patricia Correa, hereby certify that on the above-referenced date, this document, filed through the ECF system, was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and was sent by U.S. Mail, postage prepaid, to all non-registered participants who have appeared in this case, to wit: Heleni Thayre, 12 Euston St., Unit # 3, Brookline, MA 02446-4101.

/s/ Patricia Correa

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Patricia Correa

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Undersigned counsel hereby certifies pursuant to Local Rule 7.1(A)(2) that on the above-referenced date, counsel for defendant the Town of Brookline conferred in good faith with Plaintiff in an effort to resolve and/or narrow the issues related to the above captioned motion.

Patricia Correa

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Patricia Correa

Dated: March 5, 2021